



**OFFICE OF COMMUNITY PLANNING AND
DEVELOPMENT**
**Waivers Issued to Facilitate the Hurricane Katrina Recovery
Effort**

**HOME Program Suspensions and Waivers Related to
Hurricane Katrina Recovery Efforts**

The following provisions contained in the HOME Investment Partnerships (HOME) Act, as amended (42 U.S.C. 12721 et seq.) (Act), the HOME Program regulations codified at 24 CFR Part 92, and the replacement housing requirements of section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304) (HCD Act), as they relate to the use of HOME and American Dream Downpayment Initiative funds to address disaster relief as a result of Hurricane Katrina, are being suspended pursuant to the authority established in Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (NAHA) (42 U.S.C. 12840). Provisions that are not specifically waived remain fully effective:

Program Requirements:

Citizen Participation for Consolidated Plan Amendment

Citations: 24 CFR 91.105(c)(2) and (k) (Local Governments), 24 CFR 91.115(c)(2) and (i) (States), and 24 CFR 91.401 (Consortia)

Explanation: When proposing a substantial amendment to its Consolidated Plan, a participating jurisdiction (PJ) must provide a period of not less than 30 days to allow citizens and public interest groups to comment on the proposed amendment(s). This waiver will permit PJs amending their plans as a result of Hurricane Katrina to reduce the comment period to 3 days.

Justification: This waiver is required to permit PJs that sustained damage and displacement of population as a result of Hurricane Katrina to immediately reprogram HOME funds in their FY 2005 or prior years' HOME agreements, and deliver emergency housing assistance to affected residents.

Tenant-Based Rental Assistance (TBRA)

Citation: Section 212(a)(3)(A)(i) (Act), and 24 CFR 91.225(d)(1) (Local Governments), §91.325(d)(1) (States), and §91.425(a)(2)(i)

Explanation: This section of the rule requires PJs intending to use HOME funds for TBRA to certify that the provision of such assistance is an essential part of its Consolidated Plan.

Justification: Required to relieve the PJ of the administrative burden of determining and certifying needs that are obvious.

Source Documentation for Income Determinations

Citations: 24 CFR 92.203(a)(1) and (2), and 24 CFR 92.610(c)

Explanation: This section of the rule requires that initial income determinations be made using source documentation. This waiver will permit the PJ to use self-certification of income, as provided in §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility of beneficiaries for HOME and ADDI assistance who are unable to provide such documentation because their homes were severely damaged or they were displaced by Hurricane Katrina. The PJ must retain the income self-certification.

Justification: Many families whose homes were destroyed or damaged by Hurricane Katrina will not have any documentation of income and will not be able to qualify for HOME assistance if the requirement remains effective. This waiver is limited to a period of one year from the date of the letter granting this waiver.

Limitation on Use of HOME funds for Administrative Costs

Citations: Section 212(c) (Act), and 24 CFR 92.207

Explanation: This section of the rule limits the amount of HOME funds that a PJ may use for administrative and planning costs to 10 percent of allocation plus program income received. This provision is suspended to enable the PJ to expend up to 20 percent of its FY 2004, FY 2005, and FY 2006 allocations and program income received for administrative and planning costs.

Justification: Required to provide the PJ adequate funds to pay for the increased cost of administering HOME-related disaster relief activities and to relieve the PJ of the burden of identifying PJ funds to pay these costs.

Tenant-based rental assistance (TBRA): Eligible costs and requirements

Citations: Section 212(a)(3)(Act), and 92.209(b), (c), (h), (i), (j) and (k)

Explanation: This section of the rule governs the operation of a HOME TBRA program. The provisions of: (b) General requirement (certification); (c) Tenant selection; (h) Maximum subsidy are being suspended; (i) Housing quality standards; (j) Definition of Security deposit; and (k) Program operation. (The Department cannot suspend requirements with respect to low-income status of beneficiaries.)

Justification: Suspending these provisions will provide the PJ with greater flexibility to use tenant-based rental assistance as an emergency housing resource.

Rent Standards for Tenant-Based Rental Assistance

Regulatory citation: 24 CFR 92.209(h)(3)

Explanation: This section of the HOME final rule provides two options for PJs in establishing rent standards for their TBRA programs. The TBRA payment may not exceed the difference between the rent standard and 30% of the families adjusted income. In many housing markets there is a limited stock of vacant units that charge rents within the rent standards and evacuees receiving TBRA would be required to pay more than 30% of their income toward rent. This waives the HOME rent standard requirement and permits PJs to establish rent standards, by unit size, that are reasonable based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. This rent standard is to be used in calculating the TBRA subsidy for persons displaced by Hurricane Katrina. PJs are required to determine rent reasonableness in accordance with §92.209(f). This waiver is limited to a period of one year from the date of this memorandum.

Justification: This waiver is required to expedite efforts to identify suitable housing units for rent to families that have been displaced by Hurricane Katrina and provide a more generous subsidy to families that must rent units with rent charges that exceed the PJ's normal TBRA rent standard.

Reduction of matching contribution requirement

Citation: 24 CFR 92.222(b)

Explanation: HUD is hereby reducing the matching requirements for the PJ by 100 percent with respect to any HOME funds expended during FY 2006 and FY 2007. The requirement that the PJ must submit a copy of the disaster declaration is waived.

Justification: The approval of a match reduction will relieve the PJ from the need to identify or provide matching contributions to HOME projects, in light of the urgency of its housing needs and the substantial financial impact Hurricane Katrina will have on the PJ.

Project Requirements:

Maximum per-unit subsidy

Citations: Section 212(e) (Act), and 24 CFR 92.250(a) and §92.612(a)

Explanation: This section of the rule specifies the maximum subsidy amount of HOME and ADDI funds that the PJ may invest per unit.

Justification: Required to allow the PJ needed flexibility to assist affected low-income households by removing the per-unit cap on assistance.

Property Standards

Citations: 24 CFR 92.251 and 24 CFR 92.612(b)

Explanation: This section of the rule requires that housing assisted with HOME or American Dream Downpayment Initiative (ADDI) funds meet property standards based on the activity undertaken, i.e., HUD housing quality standards (HQS) in Section 982.109 for tenant-based rental assistance and homebuyer assistance, and state and local standards and codes or model codes for rehabilitation and new construction. Property standard requirements are waived for repair of properties damaged by Hurricane Katrina and for units occupied by tenant-based rental assistance recipients that were displaced by Katrina. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR Part 35 are not waived.

Justification: Required to enable the PJ to meet the critical housing needs of families whose housing was damaged and families who were displaced by Hurricane Katrina.

Property Standards for Tenant-Based Rental Assistance

Citation: 24 CFR 92.209(i) and 24 CFR 92.251(d)

Explanation: This section of the HOME final rule provides that units occupied by recipients of HOME TBRA meet the Housing Quality Standards (HQS) established at 24 CFR 982.401. This property standard requirement is waived for units occupied by TBRA recipients who were displaced by Katrina and are registered with the FEMA. PJs must ensure that these units, at a minimum, meet state and local health and safety codes within 30 days of occupancy. The lead hazard safety regulations at 24 CFR Part 35, Subpart M, which require the PJ to perform a visual assessment for deteriorated paint surfaces when a child under age 6 will occupy a unit using a TBRA subsidy, remain in effect.

Justification: This waiver is required to enable PJs to expeditiously meet the critical housing needs of the many thousands of families that have been displaced by Hurricane Katrina. This waiver is effective for 1 year from the date of this memorandum.

Tenant and participation protections

Citations: Section 225(d) (Act), and 24 CFR 92.253(d)

Explanation: This section of the rule requires an owner of rental housing assisted with HOME funds to adopt written tenant selection policies and procedures.

Justification: The requirement that there be written tenant selection criteria constitutes an impediment to the expeditious use of HOME funds. Waiver limited to period of one year from the date of this letter.

Homeownership Housing Maximum Value/Sales Price Limitation

Citation: Section 215(b)(1) (Act), and 24 CFR 92.254(a)(2)

Explanation: This section of the rule requires that the sales price or maximum after-rehabilitation value of HOME-assisted housing not exceed 95% of area median sales price.

Justification: The waiver is necessary to provide the PJ with flexibility to assist affected low-income homeowners to repair hurricane and flood damage to their homes and low-income homebuyers to purchase available, standard housing in local market areas.

Community Housing Development Organizations (CHDOs):

Set-aside for community housing development organizations

Citations: Section 231 (Act), and 24 CFR 92.300(a)(1)

Explanation: This section of the rule establishes a set-aside for Community Housing Development Organizations (CHDOs). The requirement that the PJ use 15% of its allocation for housing owned, developed, or sponsored by CHDOs is suspended for the PJ's FY 2005 and FY 2006 allocations.

Justification: Required to relieve the PJ of requirements that impede the obligation and use of funds to expeditiously provide housing to displaced persons and repair damaged properties.

American Dream Downpayment Initiative (ADDI) Requirements:

First-time homebuyer requirement

Citations: Sec. 271(c)(1) (Act), and 24 CFR 92.602(a)(1)

Explanation: This section of the rule provides that households assisted with ADDI qualify as first-time homebuyers.

Justification: Required to enable the PJ to assist families that previously owned homes that were damaged or destroyed in Hurricane Katrina to purchase homes with ADDI funds. Waiver limited to households affected by the disaster.

Per Unit Limit on ADDI Assistance

Citations: Sec. 271(c)(2)(A)(i) (Act), and 24 CFR 92.603(e)

Explanation: This section of the rule limits the amount of ADDI assistance that may be provided to an assisted homebuyer to the greater of: 1) 6 percent of the sales price; or 2) \$10,000.

Justification: Required to relieve the PJ of the burden of finding other sources of financing to assist families affected by Hurricane Katrina to purchase homes. Suspension is limited to households affected by the disaster.

Other Federal Requirements:

Optional Relocation Assistance

Citation: 24 CFR 92.353(d)

Explanation: This section requires a publicly available, written policy for providing relocation payments and other relocation assistance to persons displaced by activities not covered by the URA or assistance to persons covered by the URA or section 104(d) at higher levels than required by such provisions. Equal levels of assistance must be provided for each class of displaced persons.

Justification: Because of the large numbers of displaced person, requiring the PJ to provide equal levels of assistance to each class of displaced persons may reduce assistance to such low levels that it would have little meaningful benefit.

Section 104(d), One-for-One Replacement

Citations: Sec. 105(a)(16) of the NAHA, Sec. 104(d)(2)(A)(i) and (ii) and Sec. 104(d)(3) of the HCD Act, 24 CFR 92.353(e) and 24 CFR 42.375

Explanation: These provisions require a PJ to replace occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with a development project assisted with HOME.

Justification: Required to relieve the PJ of requirements that would impede disaster recovery, discourage PJs from acquiring, demolishing or rehabilitating disaster-damaged housing and thereby inhibiting recovery efforts designed to address health and safety problems.

Replacement Housing Assistance

Citation: Sec. 105(a)(16) of the NAHA, Sec. 104(d)(2)(A)(iii) and (iv) and Sec. 104(d)(2)(B) and (C) of the HCD Act, 24 CFR 92.353(e) and 24 CFR 42.350(e)(1)

Explanation: These provisions require a PJ to provide rental assistance payments calculated based on 60 months.

Justification: This requirement to calculate replacement housing payments based on 60 months, rather than 42 months as required by the URA creates a disparity between the available benefits. The waiver assures uniform and equitable treatment for all such tenants.

Decent, Safe and Sanitary Standard

Citation: 24 CFR 92.353(b)(2)(iii)

Explanation: The rehabilitation of a substandard dwelling occupied by a nondisplaced person in a disaster-damaged building triggers a requirement that the unit be decent, safe and sanitary upon completion of the rehabilitation.

Justification: Failure to waive this provision would impede disaster recovery, discouraging grantees from undertaking rehabilitation of disaster-damaged housing and thereby inhibiting recovery efforts designed to address health and safety problems.

Community Development Block Grant Waivers Related to Hurricane Katrina Recovery Efforts

Reduction in Public Comment Period

Citation: 24 CFR 91.105(c)(2)

Explanation: Grantees are required to prepare consolidated plans and action plans identifying activities to be carried out with CPD formula funds. Amendments to plans are generally subject to a 30 day comment period in order to give the public an opportunity to review and comment on proposed changes. Waiver reduces comment period from 30 to 3 days. Relief provided by the waiver is available through November 30, 2005.

Justification: Several Community Development Block Grant (CDBG) entitlement grantees proposed the use of CDBG funds to pay costs associated with the expense of housing and providing other services to Hurricane Katrina evacuees. Given the unexpected nature of this situation, the grantees' consolidated plans do not include activities designed to address these needs and expenses. To quickly address these costs, the entitlement grantees sought approval to waive the 30-day public comment period standard in order to amend approved consolidated plans. HUD cannot totally waive this statutory requirement but the waiver reduces the comment period to the bare minimum.

Suspension of 15 Percent Public Service Cap

Citation: Section 105(a)(8) of Housing and Community Development Act of 1974, as amended (42 USC 5305(a)(8)).

Explanation: Section 105(a)(8) of the HCD Act imposes upon CDBG grantees a 15 percent cap on public service expenditures. Inhabitants along the Gulf Coast in Alabama, Mississippi and Louisiana have been forced to abandon their homes and seek shelter in surrounding communities and states. CDBG grantees in these areas sought to address these needs and have contacted HUD seeking relief from the CDBG public services cap in order to utilize CDBG funds to cover expenses related to servicing this population. As noted above, many of these needs are public service expenses and activities eligible under the CDBG program. This waiver suspends the 15 percent cap on public service expenditures imposed by section 105(a)(8) of the Act. The relief granted by this suspension shall enable CDBG grantees to obligate and expend amounts in excess of their individual 15 percent public services caps for activities and purposes related to Hurricane Katrina assistance efforts.

Justification: The damage attributable to Hurricane Katrina has been so great and widespread that it has caused an exodus from the declared disaster areas. In this instance, addressing the damage caused by the federally declared disaster involves addressing the needs of population displaced by the disaster. As noted above, many of these needs are public service expenses and activities eligible under the CDBG program.

Emergency Shelter Grants (ESG) Program Waivers Related to Hurricane Katrina Recovery Efforts

The following provisions contained in the ESG Program regulations codified at 24 CFR Part 576, as they relate to the use of ESG funds to address disaster relief as a result of Hurricane Katrina are being waived pursuant to the provisions of 24 CFR 5.110. These waivers will facilitate ESG recipients' efforts to serve critical emergency housing and/or service needs of the displaced. Provisions that are not specifically waived remain fully effective:

Program Requirements:

Citizen Participation for Consolidated Plan Amendment

Citations: 24 CFR 91.105(c)(2) and (k) (Local Governments), 24 CFR 91.115(c) and (i) (States)

Explanation: When proposing a substantial amendment to its Consolidated Plan, a grantee must provide a period of not less than 30 days to allow citizens and public interest groups to comment on the proposed amendment(s). This waiver will permit grantees amending their plans as a result of Hurricane Katrina to reduce the comment period to 3 days. A waiver is not needed for non-substantial changes in plans.

Justification: This waiver is required to permit ESG grantees, especially “receiving communities,” to reprogram ESG funds to provide emergency shelters and other essential services to evacuees.

Definition of “emergency shelter”

Citation: 24 CFR 576.3

Explanation: The Secretary may waive the definition of “emergency shelter” so that it is not limited to “facilities.”

Justification: The current definition prevents the use of conventional housing owned by private sector landlords from being used as short-term emergency and transitional shelter resources. Because of the scope of this disaster, HUD should provide maximum flexibility to grantees to meet their emergency housing needs.

Deadlines for using grant amounts

Citation: 24 CFR 576.35

Explanation: Waive obligation and expenditure requirements as listed in (a) and (b)* for a period of up to one year (subject to any applicable statutory limitations). States must currently make the funds available for use within 65 days, obligate them within 180 days and spend them within 24 months. Entitlement communities must spend funds within 24 months.

Justification: This waiver will enable grantees to retain their funds while homeless providers and their communities seek to rebuild service delivery systems in the wake of the Katrina disaster.

*Within the citation 24 CFR 576.35, (a) refers to States and (b) refers to Formula cities, and counties, territories, and Indian tribes respectively.

HOPWA Program Guidance and Waivers Related to Hurricane Katrina Recovery Efforts

The following provisions contained in the AIDS Housing Opportunities Act, as amended (42 U.S.C. 12901 et seq.) (Act) and in the Housing Opportunities for Persons with AIDS (HOPWA) Program regulations codified at 24 CFR Part 574, relate to the use of HOPWA funds to address disaster relief efforts for eligible persons who were displaced or otherwise affected as a result of Hurricane Katrina. The waivers and guidance apply to grantees and project sponsors in the major disaster areas as well as those serving as receiving communities in assisting displaced persons who have either registered with the Federal Emergency Management Agency (FEMA), or will register within 60 days of receiving HOPWA assistance. Provisions that are not specifically waived remain fully effective:

Program Requirements:

Citizen Participation for Consolidated Plan Amendment

Citations: 24 CFR 91.105(c)(2) and (k) (Local Governments), 24 CFR 91.115(c)(2) and (i) (States)

Explanation: When proposing a substantial amendment to its Consolidated Plan, a participating HOPWA grantee must provide a period of not less than 30 days to allow citizens and public interest groups to comment on the proposed

amendment(s). This waiver will permit the grantee to amend their plans as a result of Hurricane Katrina to reduce the comment period to 3 days.

Justification: This waiver is required to permit grantees that sustained damage and displacement of population as a result of Hurricane Katrina to immediately reprogram HOPWA funds in their FY 2005 or prior years' grant agreements, and deliver emergency housing assistance to affected residents.

Source Documentation for Income and HIV Status Determinations

Citations: 24 CFR 574.3, Eligible Person

Explanation: This section of the regulation establishes the definition of eligible person as a low-income person who is living with HIV/AIDS and their families. The grantee or a project sponsor must document eligibility determinations in client files. This waiver will permit these organizations to use self-certification of income and credible information on their HIV status in lieu of source documentation to determine eligibility for HOPWA assistance of persons displaced by Hurricane Katrina. HIV status would be documented within 60 days.

Justification: Many families whose homes were destroyed or damaged by Hurricane Katrina will not have any documentation of income or other HIV related records and will not be able to quickly qualify for HOPWA assistance if the requirement remains effective. This waiver is limited to a period of one year from the date of the letter granting this waiver.

Rent Standards for Tenant-Based Rental Assistance

Regulatory citation: 24 CFR 574.310(d), Resident Rent Payment and 574.320(a)(1), Maximum Subsidy

Explanation: This section of the HOPWA regulations provides two options for grantees in establishing rent standards for their TBRA programs. The TBRA payment may not exceed the difference between the rent standard and 30% of the families' adjusted income. In many housing markets there is a limited stock of vacant units that charge rents within the rent standards and, if units that rent above these standards are available, the evacuees receiving TBRA would be required to pay more than 30% of their income toward rent. This waives the HOPWA rent standard requirement and permits grantees to establish rent standards, by unit size, that are reasonable based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. This rent standard is to be used in calculating the TBRA subsidy for persons displaced by Hurricane Katrina. This waiver is limited to a period of one year from the date of this memorandum.

In cases where an eligible person or household moves into a unit owned by another member of their family, this waives the requirement that the entire family income be used in determining eligibility and in establishing the amount of housing assistance. In these cases, the amount of housing assistance should be conditioned on the rent reasonableness and rent standard used for comparable units in the community.

Justification: This waiver is required to expedite efforts to identify suitable housing units for rent to families that have been displaced by Hurricane Katrina and provide a more generous subsidy to families that must rent units with rent charges that exceed the grantee's normal TBRA rent standard and allow for the use of family-owned units.

Property Standards for Tenant-Based Rental Assistance

Citation: 24 CFR 574.310(b)

Explanation: This section of the HOPWA regulations provides that units occupied by recipients of HOPWA TBRA meet the Housing Quality Standards (HQS) established in this section. This property standard requirement is waived for units occupied by TBRA recipients who were displaced by Hurricane Katrina. Grantees and their project sponsors must ensure that these units, at a minimum, meet state and local health and safety codes within 30 days of occupancy.

Justification: This waiver is required to enable grantees to expeditiously meet the critical housing needs of the many individuals and families that have been displaced by Hurricane Katrina. This waiver is effective for 1 year from the date of this memorandum.

Guidance on tenant selection procedures

Explanation: The assisted rental projects may adopt written tenant selection criteria that provide a priority for the special population of HOPWA eligible persons who are persons displaced by Hurricane Katrina. The project owners may add such a preference to their written tenant selection criteria so that evacuees can be housed expeditiously.

Justification: The guidance on use of written tenant selection criteria will assist grantees to expedite assistance to persons displaced due to this major disaster.

Guidance on shorten terms for rental assistance leases

Explanation: HOPWA TBRA also involves the use of a lease or occupancy agreement between the owner and tenant, with standard provisions, such as the requirement that the lease or agreement be for a period of at least one year. A

project sponsor may approve a shorter initial lease if such shorter term would improve the housing opportunities for the tenant.

Justification: The guidance on use of a lease that is for less than one year will assist grantees to expedite temporary rental assistance to persons displaced due to this major disaster. Grantees and their project sponsors can provide TBRA for a shorten lease term along with the use of permanent housing placement assistance (involving rental application fees, related credit checks and reasonable security deposits necessary to move persons to permanent housing, provided such deposits do not exceed two months of rent) to assist evacuees to find and secure housing in their rental markets.